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8
9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 02-2005-163752

15 GAIL PEARSON, M.D.
16 P.O. Box 3039
Quincy, California 95971

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

17 Physician and Surgeon's Certificate No. G 84398

Respondent.

18
19 **FINDINGS OF FACT**

20 1. On or about September 8, 2006, Complainant David T. Thornton, in his
21 official capacity as the Executive Director of the Medical Board of California, Department of
22 Consumer Affairs, filed Accusation No. 02-2005-163752 against Gail Pearson, M.D.
23 (Respondent) before the Division of Medical Quality.

24 2. On or about March 6, 1998, the Medical Board of California issued
25 Physician and Surgeon's Certificate No. G84398 to Respondent. The Physician and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
27 expire on September 30, 2007, unless renewed.

28 3. On or about September 8, 2006, Brenda Allen, an employee of the

1 Complainant Agency, served by Certified and First Class Mail a copy of the Accusation No.
2 02-2005-163752, Statement to Respondent, Notice of Defense, Request for Discovery, and
3 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
4 with the Medical Board of California, which was and is P.O. Box 3039, Quincy, California
5 95971. A copy of the Accusation, the related documents, and Declaration of Service are attached
6 as exhibit "A," and are incorporated herein by reference.

7 4. Service of the Accusation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 5. Postal returned documents were never received by the Complainant
10 Agency.

11 6. On or about November 28, 2006, Brenda Allen re-served by Certified and
12 First Class Mail the above-referenced documents to Respondent at an alternate address provided
13 directly from Respondent, which was 12 Gansner Creek Court, Quincy, California. A copy of
14 the Accusation, the related documents, and Declaration of Service are attached as exhibit "B,"
15 and are incorporated herein by reference.

16 7. On or about December 21, 2006, the Accusation and related documents
17 were returned to the Complainant Agency stamped "unclaimed." A copy of the envelope
18 containing the Accusation and related documents served on November 28, 2006, is attached as
19 Exhibit "C," and is incorporated herein by reference.

20 8. The factual basis for the Accusation No. 02-2005-163752 is set forth in the
21 Declarations of Thomas Campbell, Michel Veverka, Fayne Boyd, and James Nuovo, M.D. which
22 are incorporated herein by reference.¹

23 9. Government Code section 11506 states, in pertinent part:

24 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
25 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
26

27 1. The original declarations are located at the Sacramento Office of Administrative
28 Hearings Case No. 2006080265, *In the Matter of the Interim Suspension Order Against Gail
Pearson, M.D.*

1 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
2 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

3 10. Respondent failed to file a Notice of Defense within 15 days after service
4 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
5 Accusation No. 02-2005-163752.

6 11. California Government Code section 11520 states, in pertinent part:

7 "(a) If the respondent either fails to file a notice of defense or to appear at the
8 hearing, the agency may take action based upon the respondent's express admissions or
9 upon other evidence and affidavits may be used as evidence without any notice to
10 respondent."

11 12. Pursuant to its authority under Government Code section 11520, the
12 Medical Board of California finds Respondent is in default. The Medical Board of California
13 will take action without further hearing and, based on Respondent's express admissions by way
14 of default and the evidence before it, contained in exhibits A, B, and C finds that the allegations
15 in Accusation No. 02-2005-163752 are true.

16 **DETERMINATION OF ISSUES**

17 1. Based on the foregoing findings of fact, Respondent Gail Pearson, M.D.
18 has subjected her Physician and Surgeon's Certificate No. G84398 to discipline.

19 2. A copy of the Accusation and the related documents and Declaration of
20 Service are attached.

21 3. The agency has jurisdiction to adjudicate this case by default.

22 4. The Division of Medical Quality is authorized to revoke Respondent's
23 Physician and Surgeon's Certificate based upon the following violations alleged in the
24 Accusation:

25 a. Practice of medicine while under the influence of narcotic drug and
26 alcohol (Bus. & Prof. Code, § 2280);

27 b. Dangerous use of alcohol (Bus. & Prof. Code, § 2239);

28 c. Use of a Controlled Substance (Bus. & Prof. Code, § 2239).

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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 02-2005-163752

GAIL LEE PEARSON, M.D.
P.O. Box 3039
Quincy, California 95971

ACCUSATION

Physician and Surgeon's Certificate number
G 84398,

Respondent.

Complainant alleges:

PARTIES

1. David T. Thornton (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California.
2. On or about March 6, 1998, the Medical Board of California issued Physician and Surgeon's certificate number G 84398 to Gail Pearson, M.D. (Respondent). The Physician and Surgeon's Certificate will expire on September 30, 2007, unless renewed. On August 10, 2006, an interim suspension order was issued pursuant to Government Code section 11529, suspending the license.

JURISDICTION

3. This Accusation is brought before the Division of Medical Quality of the Medical Board of California under the authority of the following laws:¹

4. Section 2227 of the Code provides that a licensee who is guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Subdivision (a) of section 2239 provides in pertinent part as follows:

“The use or prescribing for or administering to himself or herself, of any controlled substances; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages to the extent, or in such a manner as to be dangerous or injurious to the licensee, or any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely . . . constitutes unprofessional conduct.”

6. Section 2280 provides as follows:

“No licensee shall practice medicine while under the influence of any narcotic drug or alcohol to such an extent as to impair his or her ability to conduct the practice of medicine with safety to the public and his or her patients. Violation of this section constitutes unprofessional conduct and is a misdemeanor.”

7. Section 2234, subdivision (a) of the Code provides in pertinent part as follows:

“The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1. All section references are to the Business and Professions Code unless otherwise indicated.

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
2 abetting the violation of, or conspiring to violate any provision of this
3 chapter [Chapter 5, the Medical Practice Act].”

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Practice of Medicine While Under the Influence of Narcotic Drug and Alcohol)
6 [Bus. & Prof. Code, § 2280]

7 8. Respondent is subject to disciplinary action under section 2280 of the
8 Code in that, on June 15, 2006, she practiced medicine while under the influence of alcohol and
9 marijuana to such an extent as to impair her ability to conduct the practice of medicine with
10 safety to the public and her patients. The circumstances are as follows:

11 9. On June 15, 2006, at approximately 10:30 a.m., Medical Board Senior
12 Investigator Tom Campbell (Sr. Inv. Campbell) and Investigator Assistant Ginger Gerard (IA
13 Gerard) visited Respondent at her place of employment, Greenville Medical Clinic, for an
14 interview for an unrelated matter. Respondent began working at Greenville Medical Clinic in
15 February of 2006, and was one of two physicians employed by Greenville Medical Clinic.
16 Respondent had a general practice and saw approximately 15 patients per day four days per
17 week.

18 10. Upon their arrival, Respondent was actively seeing patients, and Sr. Inv.
19 Campbell and IA Gerard were escorted into a physician's office to wait. At 11:00 a.m.,
20 Respondent entered the office and was interviewed by Sr. Inv. Campbell for approximately one
21 hour. Respondent appeared sickly and extremely thin.

22 11. At the conclusion of the interview, Respondent was advised of the
23 Medical Board's Diversion Program and was asked to provide a urine specimen. She agreed.
24 The urine specimen was collected at 12:02 p.m., and the interview was concluded. Respondent
25 collected a few medical supplies and called her next patient.

26 12. The urine specimen was subsequently submitted to MedTox Laboratories,
27 Inc. (MedTox) for an alcohol screening. The screening was positive for ethyl alcohol.

28 13. On or about June 21, 2006, Sr. Inv. Campbell contacted Respondent and
 advised her of the alcohol screening results. Respondent expressed neither surprise nor concern.

1 She stated that she had considered the information regarding Diversion, indicated that she had a
2 problem with alcohol, and agreed to sign a Statement of Understanding (SOU) regarding her
3 request for entry into Diversion.

4 14. Respondent signed the SOU on June 26, 2006.

5 15. On July 3, 2006, Respondent contacted the Medical Board of California,
6 Diversion Program (Diversion) for an initial telephonic intake interview. In the days that
7 followed, other Diversion personnel attempted to contact Respondent. Respondent was difficult
8 to reach, and she advised Diversion that the best time to reach her was at home during the
9 evening.

10 16. On July 12, 2006, at approximately 7:00 p.m., Fayne Boyd, Supervising
11 Case Manager, Medical Board of California, Diversion Program, called Respondent at her home.
12 Respondent was advised of the Diversion requirements, as well as her responsibilities while in
13 Diversion. This included attendance at weekly meetings, 12-Step meetings, and drug testing.
14 Respondent stated that attendance of the group meetings would be an inconvenience because she
15 frequently traveled to Reno for car repairs and personal medical treatments. Respondent
16 explained that she had multiple sclerosis, though she had not been formally diagnosed by a
17 physician. Respondent also complained that her participation in Diversion would not be
18 confidential and that she was being blackmailed. Respondent added that she left her previous job
19 because there was "no confidentiality". Respondent was given until July 14, 2006, to decide
20 whether she would participate in Diversion.

21 17. On July 14, 2006, Respondent contacted Diversion and stated that she
22 wished to surrender her license. She also wanted to end her practice because of the pressure and
23 blackmail. Respondent, however, continued to practice medicine through August 10, 2006.

24 18. On August 4, 2006, the Medical Board of California requested MedTox
25 Laboratories Inc. to screen the urine specimen provided by Respondent on June 15, 2005, for
26 drugs. The screening was positive for marijuana.

27 19. Marijuana is a narcotic classified as a Schedule I controlled substance.

28 ///

1 20. Respondent's conduct constitutes unprofessional conduct in that she
2 practiced medicine while under the influence of marijuana and alcohol to such an extent as to
3 impair her ability to conduct the practice of medicine with safety to the public and her patients
4 within the meaning of section 2280 of the Code.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Dangerous Use of Alcohol)

7 [Bus. & Prof. Code, § 2239]

8 21. Respondent is subject to disciplinary action under section 2239,
9 subdivision (a) of the Code in that, on June 15, 2006, she used alcohol in such a manner as to be
10 dangerous or injurious to herself, or any other person or to the public, or to the extent that such
11 use impaired her ability to practice medicine safely. The circumstances are as follows:

12 22. Complainant re-alleges paragraphs 8 through 20 above, as if fully set forth
13 at this point.

14 23. Respondent's conduct constitutes unprofessional conduct in that she used
15 alcoholic beverages to the extent, or in such a manner as to be dangerous or injurious to the
16 licensee, or any other person or to the public, or to the extent that such use impaired her ability to
17 practice medicine safely within the meaning of section 2239, subdivision (a).

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Use of Controlled Substance)

20 [Bus. & Prof. Code, § 2239]

21 24. Respondent is subject to disciplinary action under section 2239,
22 subdivision (a) of the Code in that, on June 15, 2006, she used marijuana, a controlled substance,
23 within the meaning of section 2239, subdivision (a) of the Code. The circumstances are as
24 follows:

25 25. Complainant re-alleges paragraphs 9, 10, 11, 18, and 19, above, as if fully
26 set forth at this point.

27 26. Respondent's conduct constitutes unprofessional conduct in that she used
28 marijuana, a controlled substance, within the meaning of section 2239, subdivision (a).

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alleged, and that following the hearing, the Medical Board issue a decision:

1. Revoking or suspending Physician and Surgeon's Certificate number G 84398 issued to Gail Pearson, M.D.;
2. Ordering Gail Pearson, M.D. to pay the Medical Board of California the costs of probation monitoring, if placed on probation; and
3. Taking such other and further action as deemed necessary and proper.

DATED: September 8, 2006

DAVID T. THORNTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant